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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,982	02/22/2002	Roger L. Johnston	1266.015	9956
7590	04/07/2004		EXAMINER	
Timothy E. Newholm BOYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ S.C. 250 Plaza, Suite 1030 250 East Wisconsin Avenue Milwaukee, WI 53202			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 04/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/080,982	JOHNSTON, ROGER L.
Examiner	Art Unit	
PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 3-9 and 14-16 is/are allowed.
- 6) Claim(s) 1,2,10-13 and 17-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 January 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1. Applicant's amendment and the arguments filed January 9, 2004 have been carefully fully considered. Regarding Smith (4,397,370) in view of Johnston (6,017,181), they are persuasive and the U.S.C. 103(a) rejections have been withdrawn. However, regarding Gee et al. triangular mobile vehicle (3,900,077), they are not persuasive and claims 1,2,10,11, and 17 remains rejected. Moreover, Claims 1,10,11, and 17-20 are rejected by a newly found prior art, the France Patent (FR 002597460). A non-final office action follows below.

Specification

2. The disclosure is objected to because of the following informalities: it appears that on page 7, line 4, the reference number "20" should be changed to -- 22- (boom) and on page 11, line 7, the word "each" should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,10,11, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gee et al. (3,900,077).

Gee et al. (3,900,077) discloses a triangular mobile vehicle and method to lift a load, comprising first, second, and third booms (32,32,32) (Fig. 1), each of which having a mobile base (14,16) that is independently support on the ground and a vertically extendible lift leg (12) supported on the base; and the first boom laterally between the

second and third booms, and a plurality of horizontal beams (see Fig. 1) interconnected the lift legs wherein the beams form a triangular shape when viewed in top plan.

Re claim 10, Gee et al.' triangular mobile vehicle (3,900,077) also shows the first boom has a front boom adjacent a lateral center line of a power unit (30) (see Fig. 1) and the second and third booms are located the opposite side of the lateral centerline.

Re claim 11, Gee et al.' triangular mobile vehicle (3,900,077) further shows a wheel (14) on each mobile base.

5. Claims 1,10,11, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by the France Patent (FR 002597460).

The France Patent (FR 002597460) discloses a mobile vehicle and method to lift a load, comprising first, second, and third booms (12,13,14,33) (Fig. 1), each of which having a mobile base that is independently support on the ground and a vertically extendible lift leg (see the Figs. 1 and 5-8) supported on the base; and the first boom (33) laterally between the second and third booms, and a plurality of horizontal beams (3,9,28) (see Figs. 1 & 3) interconnected the lift legs.

Re claim 10, the France Patent (FR 002597460) also shows the first boom has a front boom (33) adjacent a lateral centerline the second and third booms (13,14) are located the opposite side of the lateral centerline.

Re claims 11 and 20, the France Patent (FR 002597460) further shows a wheel (10,11,34) on each mobile base wherein at least one of the wheel (10,11) is rotatable around 360 degree.

6. Claims 1,11, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Engler et al. (4,763,800).

Engler et al. (4,763,800) discloses a mobile vehicle and method to lift a load, comprising first (30 or 32), second, and third booms (26,28) (Fig. 1), each of which having a mobile base and a vertically extendible lift leg (12) supported on the base; and the first boom (30 or 32) laterally between the second and third booms, and a plurality of horizontal beams (48,38,40,35,52,36) (see Fig. 1) interconnected the lift legs.

Re claim 11, Engler et al. (4,763,800) further shows a wheel (22) on each mobile base. It is pointed out that Engler et al. (4,763,800) contains all the structural elements and method to operate while the claimed “triangular mobile gantry” is not patentably significant. The recitation “triangular mobile gantry” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the France Patent (FR 002597460).

The France Patent (FR 002597460), as presented in section 4 above, does show that at least two of the wheels (10,11) are rotatable around 360 degree, but the prior art does not appear to show that all of the wheels are rotatable around 360 degree. However, it would have been obvious design choice to provide the base having wheel (34) to be modified to be rotatable similarly to the wheels (10,11), on the France Patent in order to provide flexibility to move the gantry.

Allowable Subject Matter

9. Claims 3-9 and 14-16 are allowed.

Response to Arguments

10. Applicant's arguments filed January 9, 2004 have been fully considered. Regarding Smith (4,397,370) in view of Johnston (6,017,181), they are persuasive and the U.S.C. 103(a) rejections have been withdrawn. However, regarding Gee et al. triangular mobile vehicle (3,900,077), they are not persuasive and claims 1,2,10,11, and 17 remains rejected. Moreover, Claims 1,10,11, and 17-20 are rejected by a newly found prior art, the France Patent (FR 002597460) and claims 1,11, and 17 are also rejected by Engler et al. (4,763,800).

The applicant's arguments on Gee et al. triangular mobile vehicle (3,900,077) are not persuasive. Applicant argues with adding a new limitation of the gantry "raisable with coordinated lifting of said first, second, and third booms to lift a load". Gee et al. triangular mobile vehicle (3,900,077) shows a first leg (32) and a second leg (34) wherein a hydraulic cylinder (46) extendable or extractable to adjust the connecting beams or

platform to maintain the horizontal position (see Figs. 1 & 2, and Col 3, lines 20-53).

Therefore, the extendable booms (32,34) are raisable to substantially lift a load.

Moreover, in response to applicant's argument that "Gee triangular mobile vehicle (3,900,077) is not a gantry", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding a new reference, the France Patent (FR 002597460) shows a gantry having first, second, and third booms (12,13,14,33) (Fig. 1), each of which having a mobile base that is independently support on the ground and a vertically extendible lift leg (see the Figs. 1 and 5-8) supported on the base; and the first boom (33) laterally between the second and third booms, and a plurality of horizontal beams (3,9,28) (see Figs. 1 & 3) substantially interconnected the lift legs. Figures 4-8 clearly show that the gantry is capable of being raised to lift a load.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN
Examiner
Art Unit 3652